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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

Nos. 74-233, 74-234

THE COMMONWEALTH OF VIRGINIA, *Petitioner,*

v.

THE CIVIL AERONAUTICS BOARD, *Respondent.*

REPLY BRIEF ON BEHALF OF PETITIONER THE COMMONWEALTH OF VIRGINIA

ANDREW P. MILLER,
Attorney General

HENRY M. MASSIE, JR.,
Assistant Attorney General

1100 East Broad Street,
Richmond, Virginia 23219

PAUL REIBER,
1625 Eye Street, N.W.
Washington, D. C. 20006

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Your petitioner contends that the decisions below present for the first time the application of the anti-discrimination statute, Section 404(b) and 1002(f) of the Federial Aviation Act of 1958, 49 U.S.C. 1374(b) and 1482(f) to the transportation of cargo by aircraft. The application of those statutes has far reaching importance to the ports and shippers.

The overriding importance of this case should not be confused or diminished by distortions of facts in the briefs in opposition designed to prevent a review by this court. We call attention to three items which are basic to the position of the opposition.

I. THE ASSERTION THAT THE RATES ARE BASED ON THE " MILES FLOWN" IS INCORRECT.

The defense of the rates formula repeated in all the briefs in opposition is that the rates are based on "miles flown", or are "mileage based" (C.A.B. Brief, pp. 4 and 7, Pan American and TWA Joint Brief, p. 3, and Chicago and Detroit Joint Brief, p. 11) that assertion is disproved by the rates shown on Table I on page 10 of the Petition and by the following comparison of rates between two U.S. gateways and the same cities in Europe. In each case Dulles has the shorter mileage but its rates are higher.

	Miles	Rates*
Detroit-Shannon	3,477	$ .89
Dulles-Shannon	3,270	.92
Detroit-London	3,755	.93
Dulles-London	3,646	.96
Detroit-Frankfurt	4,155	.97
Dulles-Frankfurt	4,042	1.00
Detroit-Rome	4,647	.98
Dulles-Rome	4,471	1.00

Source: I.A.T.A. Mileage Manual, Air Tariff Corporation, C.A.B. 26.

The assertion is also disproved by the fact that for 200 miles of additional air service beyond London to Brussels, New York shippers pay only an added $.02 per pound. But when shipments come to Dulles—200 miles beyond New York—the added charge is $.05 per pound.

It is clear the rates are not based on "miles flown."

* For 220 lbs. General Commodity Rates.

II. THE ASSERTION THAT THE ADMINISTRATIVE LAW JUDGE DEEMED THE BOARD'S FORMULA TO BE "A LAWFUL REMEDY" IS INCORRECT.

The assertion that the Administrative Law Judge deemed the Board's formula "a lawful remedy" (CAB Brief p. 3) is incorrect. The Judge found to the contrary that "it would not provide a complete remedy for the problem." (J.A. 67a-68a)

III. THE ASSERTION THAT THE RATE PRESCRIBED WILL "TEND TO REDUCE THE AMOUNT OF NORTH ATLANTIC CARGO TRAFFIC CURRENTLY BYPASSING OTHER GATEWAYS IN FAVOR OF NEW YORK" IS INCORRECT.

The assertion that the preference for New York has been removed (C.A.B. Brief, pp. 6, 7) by the rates prescribed is disproved by the flow of traffic under the new rates which shows New York now has even a higher percentage of the North Atlantic air cargo traffic than it had in the years prior to the C.A.B. decision.

U. S. FLAG CARRIER ESCEDULED FREIGHT TONS ORIGINATED

	1969		1970		3rd Quarter—1974	
	Tons	% of Tons	Tons	% of Tons	Tons	% of Tons
East Coast Gateways						
Baltimore	509	0.8	309	0.4	23	—
Washington	3,089	4.8	3,234	4.6	1,214	4.0
Philadelphia	1,576	2.4	1,208	1.7	769	2.6
New York	55,035	85.5	60,792	85.5	26,056	86.4
Boston	4,160	6.5	5,531	7.8	2,114	7.0
TOTAL	64,369	100.0	71,073	100.0	30,176	100.0

Source: Exhibit No. I AD-304, C.A.B. Form 41

It is clear therefore that the new rates have not removed the preference for New York and have borne out the earlier conclusion of the Administrative Law Judge.

These distortions should not divert the court from the basic conclusion that preference for New York and prejudice to Dulles continues unabated by the Board's decision.

We submit, therefore, that the Court grant certiorari and review the application of the discrimination statutes to the growing commerce of cargo movement in air transport.

ANDREW P. MILLER,
Attorney General of Virginia,
1100 East Broad Street,
Richmond, Virginia 23219

HENRY M. MASSIE, JR.,
Assistant Attorney General,
1100 East Broad Street,
Richmond, Virginia 23219

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1625 Eye Street, N.W.
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